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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,050

11/03/2006

Robert Graham Price

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EXAMINER

GITOMER, RALPH J

ART UNIT

PAPER NUMBER

1657

MAIL DATE

DELIVERY MODE

03/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,050	<b>Applicant(s)</b> PRICE ET AL.	
	<b>Examiner</b> Ralph Gitomer	<b>Art Unit</b> 1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

The amendment received 11/18/08 has been entered and claims 1-20 are currently pending in this application.

The amended title is acceptable. In view of the amendments to the claims and arguments presented, the rejections of record under 35 USC 102(b) and 112, second paragraph, are hereby withdrawn.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Richardson in view of Bochner.

See the teachings of Richardson above.

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The device claims differ from Richardson in that they include a number of chromogenic enzyme substrates, Mg+2, buffer, layered filters.

Bochner (5,464,755) entitled "Microbiological Medium and Method of Assay" teaches in column 1 line 32 that urine is a type of sample tested. In column 7 lines 21-27, rapid tests include enzymatic assays, stains, and filtration that is colorimetric. In column 9 lines 16-37, selective media with multiple colorimetric substrates are listed. In column 13 last paragraph, urinary tract pathogens are plated on multiple compartment dishes to distinguish various pathogens. In column 41 Example 15, Mg+2, a common enzyme cofactor is added to enhance enzyme activity.

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the device of Richardson and include any desired known selective substrates to identify bacteria because Richardson teaches identifying bacteria with chromogenic substrates and to then include any known or multiple chromogenic substrates for their known function as taught by Bochner with the expected results would have been obvious. Identifying bacteria on any type of substrate with known chromogens is old. Cellulosic filter paper has pores of many different sizes. And adding reagents known to preserve activity of bacterial enzymes desired to be detected as taught by Bochner would have been obvious. Filtering bacteria with buffers is old. Regarding layers, the filters of Richardson reads on layers as claimed.

Applicant's arguments filed 11/18/08 have been fully considered but they are not persuasive.

Applicants response argues that neither Richardson nor Bochner teach a method for detecting and identifying microorganisms. The present invention does not employ the use of media to stimulate the growth of microorganisms. Bochner teaches that multicompartment tests are not useful for primary isolation from urine specimens.

It is the examiner's position that Richardson is directed to an enzyme assay and in column 11 line 44 the sample is urine. Bochner is entitled "Microbiological Medium and Method of Assay" and in the abstract methods for identification of bacteria associated with UTI's are performed. The present claims do not exclude nutrient media and nutrient substrates as well as non-nutrient substrates are commonly used as chromogenic enzyme substrates. Regarding Bochner's teachings, that a method has disadvantages is not related to the above rejection because no results are claimed and notably the present claims are not directed to primary isolation associated with urine specimens.

The abstract of the disclosure is objected to because it does not describe the invention. Correction is required. See MPEP § 608.01(b).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tuompo (5,714,343) teaches multilayer porous filters with chromogens to detect microorganisms in urine.

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Maes (6,846,648) teaches porous filters with chromogens to detect microorganisms in urine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ralph Gitomer/  
Primary Examiner, Art Unit 1657

Ralph Gitomer  
Primary Examiner  
Art Unit 1657